IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.704 OF 1993

Shri. Maheshchand Boopsingh,)
Adult, Indian Inhabitant, residing)
at C/o. Shri M.R.Rahi, Quarter)
No.22, Building No.35, R.P.F.)
Officers Colony, Mulund (East),)
Bombay-400 081.) ..PETITIONER.

Versus

1. Oil & Natural Gas Commission)
(Notice to be served through)
the Regional Director))
Vasudhara Bhavan, 8th Floor,)
Bandra (East),)
Bombay-400 051.)

2. General Manager (Personnel &)
Administration) O.N.G.C.,)
Bombay Regional Business Centre,)
Vasudhara Bhavan, 2nd Floor,)
Bandra(East), Bombay-400 051.)

3. General Manager (Technical),)
O.N.G.C., Bombay Regional)
Business Centre, 12th Floor,)
Express Towers, Nariman)
Point, Bombay-400 021.)

4. Prakash Kadam,)
499/1/3, Shivaji Nagar)
Park Site, Vikhorli,)
Bombay-400 079.)..RESPONDENTS.

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Mr.H.D.Buch with Ms.Bina Dholakia, Advocate for the Petitioner.

Mr.J.P.Cama, Sr.Counsel with Mr.S.A.Balwal i/b Vyas & Balwal for Respondents.

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CORAM : **F.I.REBELLO AND**
SMT.V.K.TAHILRAMANI,JJ.

DATED : **JUNE 26, 2006.**

JUDGMENT: (PER REBELLO,J.)

1. The petitioner belongs to a Scheduled Caste, notified in the State of Uttarpradesh. The name of the petitioner was forwarded to Respondent No.1 by the Association and Organisation of Scheduled Castes and Scheduled Tribes recognised by respondent No.2 pursuant to a request made by Respondent No.1. Subsequent to that, Respondent No.1 called the petitioner for interview. Alongwith the petitioner, it appears that, there were nine other candidates. In the selection done, the petitioner was placed at Sr.No.1. The post for which the interviews were held, was the post of Card Punch Operator Grade-III. Respondent No.1 is a Public Sector Establishment established under the statute and is managed and controlled by the Union of India. The Government of India had issued instructions to all the Central Government Departments and Public Sector Enterprises to launch a special recruitment drive to fill in all the backlog vacancies reserved for the Scheduled Castes and Scheduled Tribes latest by 30th

September, 1992. Pursuant to these directives, requisitions were sent by Respondent Nos.1 & 2 to the local employment exchange as also the employment exchanges of Panvel and Collector, Raigadh. The requisition also shows that notice was forwarded to voluntary organisations of Scheduled Castes as per Government notification. This was pursuant to a letter dated 30.6.1992 of Respondent No.1. The Regional Employment Exchange had been called upon to forward the names of the candidates fulfilling the necessary qualifications on or before 15.7.1992. As the Regional Employment Exchange Officers of Mumbai or Panvel did not respond to the said notification, the Respondents had considered the names received from Dr.Bhimrao Ambedkar Welfare Association and Akhil Bharat Anusuchit Jati Parishad, both of whom had been sent the communication of 30.6.1992. The District Collector, Raigadh, District.Alibag also did not forward any name. Considering the qualifications prescribed and in terms of the O.N.G.C.(R & P) Regulations 1980, the selection board was constituted and names were empanelled. In the affidavit of Bipin Prakash, Joint Manager

(P & A) R & P Section, ONGC, it is set out that the petitioner was at the top of the select list. It is the case of the petitioner that though he was selected, no appointment letter was issued in August, 1992. The petitioner has averred that he learnt, that there was pressure on the Respondents from the Unions and local politicians not to make the appointment in accordance with the selection already completed. The petitioner was awaiting his appointment. Inspite of his repeated enquiries, the petitioner received no categorical answer from the Respondents. To the shock and surprise of the petitioner, the petitioner learnt that Respondent Nos.1 & 2 have once again sought nominations from the local Employment Exchange by sending them reminders in pursuance of the earlier requisition sent in the month of June, 1992, though, the selection procedure had been duly, legally and validly completed in August, 1992. The petitioner's case is that he learnt in December, 1992 that local Employment Exchange nominated ten candidates who were called for selection. From those candidates who were called for interview, Respondent No.4 was selected. It

is the case of the petitioner that though he had already been selected yet was not appointed. This action of the Respondents was arbitrary and as Respondent No.4 had been selected in an arbitrary manner and on account of undue pressure from the Unions and local politicians, he has preferred this Petition.

2. A learned Bench of this Court was pleased to admit the Petition and granted interim relief staying the appointment of Respondent No.4. The petitioner thereafter took out a Motion for a direction that he should be appointed against the vacancy. A learned Bench of this Court by order dated 28.1.1994, was pleased to order Respondent No.1 to fill-up the vacancy within two weeks by appointing the petitioner. Needless to say that the appointment was subject to result of the Petition. Respondent No.4 thereafter took out motion No.243 of 1994 for vacating the interim relief granted in favour of the petitioner. The learned Bench of this Court by its order dated 4th March, 1994 noted that though Respondent No.4 had been served for the hearing when the interim

relief for appointment of petitioner was being considered yet chose not to appear, in these circumstances, the Respondent No.4 could not make any grievance against the interim order, and accordingly rejected the motion. Respondent No.4 did not appeal against the order.

3. Pursuant to the order issued by this Court on 28.1.1994, the petitioner came to be appointed by letter of appointment dated 11.2.1994. The petitioner since then has been working and has been promoted to the post of Card Punch Operator Grade-II on 1.1.2001. He was initially on probation in the said promotional post and has been declared as having successfully completed the said period of probation.

4. On behalf of the petitioner it is submitted by their learned Counsel, that Respondent No.1 correctly followed the procedure for appointment to the post as no names had been forwarded by the local employment exchange or by the employment exchange of Raigadh, in term of the Rules. Cancellation of selection procedure by Respondent

No.1 was totally arbitrary and was based on extraneous considerations. It is submitted that this Court had rightly directed the appointment of the petitioner. The petitioner since 1994 is holding the post and has also been promoted in the organisation. The petitioner has been given several awards for meritorious performance. For all the aforesaid reasons, it is set out, that this Court ought not to interfere with the appointment of the petitioner, moreso, as Respondent No.1 has complied with the order of this Court and chose not to challenge the order by way of Appeal to the Apex Court. The petitioner, it is pointed, is not now in a position to secure any employment elsewhere and the petitioner and his family is totally dependant on his job. In terms of the directions of the Government of India the vacancies had to be filled by 30th September, 1992. For all these consideration, the appointment done should not be interfered with, though, it was subject to final order in this Petition.

5. On behalf of Respondents, Shri. Bipin

Prakash, Joint Manager (P & A) R & P, ONGC, had filed affidavit. In the said affidavit, it is admitted that though requisition was sent to the Regional Employment Officer, Bombay on 30.6.1992, no names of candidates were forwarded as on or uptill 15.7.1992. The Respondent No.1 had also forwarded the copy of the notification to the Secretary of various voluntary organisations of Scheduled Castes and Scheduled Tribes. Two organisations forwarded the names. The Employment Exchange, Bombay or employment exchange,Raigadh nor the District Collector forwarded any names pursuant to notification sent to them. Accordingly, the selection committee was constituted in terms of ONGC Rules and selection was done. The petitioner was placed at Sr.No.1 on the merit list.

. In the affidavit, it is further stated that the local Sthanik Lokhadikari Samiti had taken up the case with the management, that the offer of appointment is to be issued only from the candidates sponsored by the Employment Exchange. In these circumstances, the local employment

exchange was reminded for sponsoring the candidates. A complaint was also received from the General Secretary, Sthanik Lokhadhikari Samiti alleging irregularities in selection of names of SC candidates for the post of Card Punch Operator Grade III, for the interview held on 10.8.1992. It is the case of Respondent No.1 that in view of the allegations, the Respondents decided to make another request to the employment exchange. The employment exchange ultimately forwarded names of twelve candidates on 16.12.1992. They were called for the test on 9.2.1993. Of the twelve candidates called for the test on 9.2.1993 only eleven candidates appeared and three candidates were declared as qualified in the test. They were subsequently interviewed and letter of appointment was issued in favour of Respondent No.4. Alongwith the affidavit, various documents have been annexed.

. An additional affidavit came to be filed by Shri.N.K.Sudhakaran wherein apart from the reiteration of what was set out earlier, an additional ground was taken that the candidates

belonging to Scheduled Caste community from other States, cannot be considered against the reserved vacancies of Group C & D(Class III & IV) in the State of Maharashtra. For all the aforesaid reasons, it is pointed out that Respondent No.1 have not acted arbitrarily and consequently as the Respondent No.1 had conducted a fresh selection by cancelling the earlier selection, the petitioner has no right to be appointed to the said post.

. At the hearing of this Petition on behalf of the Respondents, their learned Counsel submits that it was open to the Respondents not to act on the original selection and pursue fresh selection as names had not been recommended by the local Employment Exchanges earlier. Apart from that it is submitted that the petitioner does not belong to Scheduled Caste or Scheduled Tribe notified in the State of Maharashtra and hence was not eligible for being considered.

6. Having heard the learned Counsel for the Petitioner, two questions arise and which this Court has to answer, and which are :

A. Whether the procedure followed by Respondent No.1 in conducting the first interview, where the petitioner was selected could be said to be illegal and arbitrary and if not so, was it open to Respondent No.1 to cancel the selection process because of complaints by the local trade unions and/or local politicians ?

B. Whether for employment, under the Central Government or on Central organisation, Scheduled Castes and Scheduled Tribes notified from other States are precluded from being considered even if the employment has to be done on a local basis ?

7. We shall address ourselves to the first contention. The Government of India has issued circulars/clarifications/notifications from time to time in the matter of filling in vacancies. By notification of 10th April, 1968, issued by the Ministry of Home Affairs it has directed, that

while notifying vacancies to the Employment Exchange, it should be clearly indicated in the requisition whether or not vacancies are reserved for Scheduled Castes/ Scheduled Tribes/ Ex-Servicemen. By subsequent notification it has been notified that all vacancies should be notified to the local employment exchange in the form of requisition given in the Appendix to the notification. A notice of at least 15 days should be given to the employment exchange for sponsoring candidates against the reserved vacancies. Another notification was issued by the Ministry of Home Affairs, Department of Personnel & A.R. that the attention of the Government was invited to the fact that vacancies reserved for Scheduled Castes/Scheduled Tribes are not notified to the voluntary organisations of Scheduled Castes and Scheduled Tribes recognised for that purpose as required and further it directed that wide publicity be given for filling in reserved vacancies, so that more and more Scheduled Castes and Scheduled Tribes persons can apply for the vacancies reserved for them.

. Respondent No.1 has framed Rules known as the Recruitment and Promotion Regulations, 1980. In terms of Rule 6, the vacancies to be filled in by direct recruitment are to be notified by employment exchange in accordance with the provisions of the Employment Exchange Act or to be advertised in the daily papers having circulation in major parts of the country. What is relevant is Rule 10, which reads as under :

> "10. Special representation to certain specified categories of persons:
>
> (1) In making appointments to posts, either by direct recruitment or promotion, the Commission shall provide reservation and other concessions to candidates belonging to the Scheduled Castes, the Scheduled Tribes and other special categories of persons in accordance with the orders issued by the Central Government from time to time in this regard with respect to reservations of posts under the control of that Government to candidates belonging to the Scheduled Castes, Scheduled Tribes and other special categories of persons."

. Thus, it is clear from this that Respondent No.1 was bound to follow the directives issued by

the Central Government in the matter of appointments for reserved categories like Scheduled Castes and Scheduled Tribes.

. From the above, the following emerges :

. In the instant case, Respondent No.1 followed the procedure by notifying the local employment exchange and apart from that also from the employment exchange at Panvel. No names were forwarded by local employment exchange Mumbai or the employment exchange at Raigadh or Collector, Raigadh, within the period of requisition. As set out in the Government circulars, notice had also been sent to various voluntary agencies of Scheduled Castes and Scheduled Tribes. Those agencies forwarded the names to Respondent No.1. Respondent No.1 in turn considered the names forwarded and invited the persons for interview. This is not a case where the voluntary organisations had pressurised Respondent No.1 to accept the names forwarded. In terms of the Rules they were to be notified and in turn they have notified Respondent No.1 of persons on their

registers amongst Scheduled Castes, who were eligible for consideration. Further in terms of the directions of the Government of India the backlog vacancies had to be filled in by 30th September, 1992. The affidavit of Respondent No.1 would then show that a selection committee was constituted in terms of the Rules and from amongst the eligible candidates, the petitioner was found to be most meritorious and was placed at Sr.No.1 of the merit list. The question then is, whether the selection could have been cancelled. As pointed out earlier, Respondent No.1 duly followed the procedure in the matter of selection. Merely because some grievance was made by local politicians/unions could not have been the basis for cancelling the selection unless the selection procedure could be faulted. Nothing has been placed on record by Respondent No.1 except stating that there were complaints by a local samiti and by a politician. There is nothing placed on record to show that these allegations were investigated and found to be true. Thus all that has been brought on record are mere allegations made by the local unions/politicians. It is true

that this Court would not ordinarily direct the appointing authority to make appointment, unless it is shown that action is arbitrary. In the instant case, a learned Bench of this Court after hearing Respondent No.1 and the petitioner was pleased, on the facts before it, to direct that petitioner should be issued letter of appointment. In our opinion, considering the record that order cannot be faulted. Respondent No.1 also did not challenge the said order but accepted the said order and appointed the petitioner to the post. We are, therefore, clearly of the opinion, that the proper procedure in selecting the petitioner was complied with and the selection was within the Rules as framed by Respondent No.1. The decision to start a fresh process of selection was therefore clearly arbitrary. We may also point out that in the case of **Union of India and Ors. Vs. N. Hargopal and Ors.**, reported in **AIR 1987 Supreme Court 1227**, the Apex Court has made it clear that registering of names with the employment exchange is not because of the requirement of the Employment Exchange Act, which only requires notice of vacancies to be notified,

but because instructions have been issued by the Government of India that the names should be called from the employment exchange.

8. As we have held that the selection process was according to law, the next issue is whether the petitioner was eligible to be appointed as he did not belong to a Scheduled Caste notified for the State of Maharashtra. Employment in Respondent No.1 is employment in the Central Government organisation. Normally all citizen should be eligible to apply unless there are rules of the country. In the instant case the rules required the selection to be done in terms of Central Government directives. Even though, the procedure to be followed is appointment on a local basis, yet all eligible persons amongst notified Scheduled Castes must be considered. On behalf of the petitioner, learned Counsel has drawn our attention to the notification issued by the Government of India, Ministry of Home Affairs dated 13th September, 1950, which set out that insofar as the employment in a Central Government undertaking the Scheduled Castes and Scheduled

Tribes of the State could be considered. Further there is subsequent notification dated 18/31st August, 1992, which reads as under :

> "3. It is clarified that above instructions are applicable only for the State Government services, admissible in State Government's educational institutions, etc.. All Scheduled Castes and Scheduled Tribes are treated alike for jobs in the Central Government. In view of this clarification, SC/ST persons employed in Central Government services in the States/Union Territories are entitled to get the benefits admissible to them. Since Department of Telecommunications is Central Government, the benefits admissible to SC/ST persons under the Central Government should continue to be extended to SC/ST person in the Department to those also who have migrated from the State of their origin to another State."

. From this paragraph, it would be clear that not only SC/ST of the State are to be considered, but, SC/ST from other States also are to be considered, bearing in mind that employment is in the Central Government and or Central Government Undertakings. The Supreme Court in the case of **S.Pushpa & Ors. Vs. Sivachanmugavelu & Ors.** reported in **AIR 2005 Supreme Court 1038**, in case

of recruitment in Union Territory of Pondicherry has held that considering Pondicherry to be Union Territory, administered by President, the employment to the post in the administration of the said Territory would be available to the reserved category of Scheduled Castes not only from the Territory, but, also for the Scheduled Castes from other States and Union Territories' in the country. In our opinion, considering that these are appointments to a post in the Government of India or a Government organisation, it is not possible to restrict employment to Scheduled Castes of only those States where the establishment is located, unless there are rules which would be constitutionally permissible. It is in these circumstances, the Government recognising the constitutional imperative in August, 1992 issued clarification, that make employment available to all Scheduled Castes and Scheduled Tribes from the other States also. At the highest when recruitment is being done on local basis all that is required is that the candidate's name is on the list of the local employment exchange. In the event the local

employment exchange does not forward their names as per rules, the names are also to be called from Scheduled Castes organisations in that State from the records maintained by them. This has been done in the instant case. It cannot therefore be said that the petitioner was ineligible for consideration.

. On behalf of the respondents learned Counsel drew our attention to the judgment in the case of **Secretary, State of Karnataka & Ors. Vs. Umadevi & Ors.,** reported in **2006 II CLR 261.** Those were the matters of regularisation of adhoc/ temporary employees. The law has been reiterated that merely because an employee is appointed on adhoc or temporary basis does not confer on them right to be regularised. This judgment would not attract the facts in the instant case. We are concerned with a case where a selection to a regular post was done by following due procedure. Once that be the case, the judgment in the case of Umadevi (Supra) would clearly not be attracted. In our opinion therefore the second contention urged on behalf of the respondents must also be

rejected.

9. In the aforesaid reasons, in our opinion, the Petition deserves to be allowed and consequently the interim order of this Court dated 28.1.1994 is confirmed and is made Rule in this Petition. No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]